[Cite as *Taylor v. Taylor*, 2010-Ohio-5794.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

MARY RUTH TAYLOR Appellant v. RAYMOND MICHAEL TAYLOR Appellee	C. A. No. 10CA009790 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 06DU066628

DECISION AND JOURNAL ENTRY

Dated: November 29, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Before her divorce from Raymond Taylor was final, Mary Taylor moved the trial court to "[m]odify" the shared parenting plan to give her full custody of their daughter. Despite the pending motion, two months later, the parties entered into an agreed judgment of divorce. The agreed entry adopted the existing shared parenting plan and designated both parties residential parents and legal custodians of their child, but also indicated that the court had scheduled mediation, an in camera interview of the child, and a hearing on the custody motion. Seven months later, the trial court held a hearing on Ms. Taylor's motion and announced from the bench that it found no change in circumstances, but would modify Mr. Taylor's companionship time. Three months after that, the trial court entered judgment finding that there was a change in circumstances, awarding Ms. Taylor sole custody, and giving Mr. Taylor the visitation schedule it had previously announced from the bench. Mr. Taylor has attempted to

appeal that judgment, arguing that the trial court incorrectly found a change in circumstances sufficient to warrant a review of the custody decision and incorrectly determined it was in the child's best interest to grant sole custody to Ms. Taylor. Due to the fact that the trial court has yet to enter a final decree of divorce in this matter, this Court does not have jurisdiction to consider the merits of the attempted appeal.

BACKGROUND

{¶2} In April 2007, the Taylors agreed to a shared parenting plan for the purposes of both temporary orders and the final decree. The divorce was subsequently delayed by Ms. Taylor's bankruptcy proceedings. In February 2009, before the trial court issued what it intended to be the final decree of divorce, Ms. Taylor moved "[t]o [m]odify [p]arental [r]ights [a]nd [r]esponsibilities." By way of that motion, Ms. Taylor requested sole custody of the couple's daughter, K.R.T.

{¶3} On April 13, 2009, without hearing Ms. Taylor's motion, the trial court entered a slightly modified version of an "Agreed Judgment Entry" that the parties had submitted. The entry included orders regarding division of property, spousal support, and allocation of parental rights and responsibilities. Via the agreed entry, the trial court adopted the shared parenting agreement that designated both parties residential parents and legal custodians of K.R.T., but it also acknowledged the pending custody motion. In a handwritten notation in the section captioned "Allocation of Parental Rights and Responsibilities," the court wrote that "[t]he parties agree that there is a pending motion to modify or terminate the shared parenting plan. Parties to attend mediation and court [to] interview child and motion to be heard on 8-13-09 [at] 3:00 p.m."

{¶4} Two and a half years after the parties had implemented the shared parenting plan, but just seven months after the entry of the agreed judgment, the trial court held a hearing on Ms.

Taylor's custody motion. The day after the hearing, with the parties present, the trial court announced from the bench that it had not found a sufficient change in circumstances under Section 3109.04(E)(1)(a) of the Ohio Revised Code, but, under Section 3109.04(E)(2)(b), would order Mr. Taylor's companionship time reduced to every other weekend from Thursday evening until Monday morning, with holidays and summer companionship time to remain as previously ordered. In a handwritten journal entry filed the same day, the trial court did not mention changing the residential parent designation, but wrote that Mr. Taylor's companionship time would be modified according to the schedule announced from the bench and ordered Ms. Taylor's lawyer to draft a full judgment entry implementing the decision.

{¶5} Three months later, the trial court issued a judgment entry, explicitly finding a change in circumstances under Section 3109.04(E)(1)(a). The trial court ordered the same modification of parenting time it had announced from the bench, but removed Mr. Taylor as a residential parent and legal custodian and ordered him to pay child support.

JURISDICTION

{¶6} Although the parties have not raised it, this Court must consider the threshold question of jurisdiction before reaching the merits of this attempted appeal. Courts of appeals "have such jurisdiction as may be provided by law to review . . . judgments or final orders . . . ." Ohio Const. Art. IV, § 3(B)(2). Under Rule 54(B) of the Ohio Rules of Civil Procedure, if multiple claims are presented in an action, "the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." Under Rule 75(F) of the Ohio Rules of Civil Procedure, "[f]or purposes of Civ. R. 54(B), the court shall not enter final judgment as to a claim for divorce, . . . unless one of the following applies: (1) [t]he judgment also divides the property of the parties, determines the

appropriateness of an order of spousal support, and where applicable, either allocates parental rights and responsibilities, including payment of child support, between the parties or orders shared parenting of minor children; (2) [i]ssues of property division, spousal support, and allocation of parental rights and responsibilities or shared parenting have been finally determined in orders, previously entered by the court, that are incorporated into the judgment; [or] (3) [t]he court includes in the judgment the express determination required by Civ. R. 54(B) and a final determination that . . . [t]he court lacks jurisdiction to determine [the remaining] issues."

{¶7} In the agreed judgment entry of April 2009, the trial court did not include a determination under Civil Rule 54(B) that there was no just reason for delay and that it lacked jurisdiction to consider the remaining issues. In fact, the trial court purported to have determined all issues, including the allocation of parental rights and responsibilities. The trial court wrote that it adopted the parties' agreed shared parenting plan, but it did so subject to future proceedings including (1) an in camera interview of the child, (2) a mediation conference, and (3) a hearing on the custody motion. Thus, the trial court acknowledged that the allocation of parental rights and responsibilities was subject to review in future related proceedings. In fact, the order included a scheduled hearing date and the steps the parties and the court would take in the interim to prepare for the impending custody hearing.

{¶8} Rather than a final custody determination, the agreed judgment entry of April 2009 contained only an interim order adopting the shared parenting plan until the court could hold a hearing on Ms. Taylor's motion to modify it. "A judgment that leaves issues unresolved and contemplates that further action must be taken is not . . . appealable . . . ." *State ex rel. Bd. of State Teachers Ret. Sys. of Ohio v. Davis*, 113 Ohio St. 3d 410, 2007-Ohio-2205, at ¶45 (quoting *State ex rel. Keith v. McMonagle*, 103 Ohio St. 430, 2004-Ohio-5580, at ¶4). "[A]ny order or

other form of decision, however designated, which [fails to comply with the requirements of Civil Rule 54(B)] . . . shall not terminate the action as to any of the claims . . . and [is] . . . subject to revision at any time before the entry of judgment adjudicating all the claims . . . ." Civ. R. 54(B). Therefore, the "Agreed Judgment Entry" of April 13, 2009, was not a final judgment of divorce and remains subject to revision until the trial court enters a final divorce decree under Rule 75(F) of the Ohio Rules of Civil Procedure.

{¶9} The February 2010 entry that Mr. Taylor attempted to appeal in this matter modified the agreed entry of April 2009 by changing the allocation of parental rights and responsibilities and ordering Mr. Taylor to pay child support. The 2010 entry did not create a final, appealable divorce decree, however, because it did not divide the property, determine the appropriateness of spousal support, or incorporate the previously issued final orders regarding those issues. Civ. R. 75(F); see also *Freeman v. Freeman*, 9th Dist. No. 06CA0049, 2007-Ohio-1351, at ¶9 (quoting *Drummond v. Drummond*, 10th Dist. No. 02AP-700, 2003-Ohio-587, at ¶15) ("'[A]lthough a domestic court is permitted to issue separate decisions upon various issues, these determinations must all be incorporated into one final judgment' pursuant to Civ.R. 75(F)(2).")). As there is no final, appealable order, this Court does not have jurisdiction to consider the merits of Mr. Taylor's attempted appeal.

CONCLUSION

{¶10} This Court lacks jurisdiction because the trial court has not entered a final decree of divorce that conforms to the requirements of Rule 75(F) of the Ohio Rules of Civil Procedure. The appeal is dismissed.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
BELFANCE, J.
CONCUR

APPEARANCES:

JONATHAN E. ROSENBAUM, attorney at law, for appellant.

JAMES N.TAYLOR, attorney at law, for appellee.